APPENDIX A

Amendment XIV.—Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Code of Criminal Procedure—Louisiana

Art. 779. Trial of misdemeanors

A defendant charged with a misdemeanor shall be tried by the court without a jury.

Source: Former R.S. 15:340; Const. Art. I, § 9, Art. VII, § 41.

Official Revision Comment

(a) This article is merely a stylistic revision of former R.S. 15:340.

(b) The term "misdemeanor" is defined in Art. 933 (4); therefore, the definition contained in former R.S. 15:341 is not retained in the above article. See also, the definition of "misdemeanor" in R.S. 14:2.

Art. 780. Right to waive trial by a jury

A defendant charged with an offense neither capital nor necessarily punishable by imprisonment at hard labor may waive a trial by jury and elect to be tried by the court. At the time of arraignment, the defendant in such cases shall be informed by the court of his right of waiver and election.

Source: Former R.S. 15:342, 15:259.

Official Revision Comment

(a) This article is simply a converse restatement of former R.S. 15:342.

(b) The last portion of the article is taken from former R.S. 15:259, which in the 1928 Code of Criminal Procedure was placed among the articles dealing with arraignment.

(c) Const. Art. VII, § 41 seems to require a five-man jury trial in cases not necessarily punishable by hard labor since the provision uses the word "shall". A serious question of the validity of the waiver would arise, except for the fact that Const. Art. VII, § 42 provides that district judges have authority to try all cases not necessarily punishable by hard labor "when the jury is waived by the defendant."

(d) This article makes no mention of the time when the defendant must elect nor of the situation in which the defendant wishes to revoke his waiver. The provisions of this article have been operative since 1921, and there has been no problem with such matters. They have been handled satisfactorily under the general authority of courts to regulate their business.

Art. 782. Number of jurors composing jury; member which must concur

Cases in which the punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. Cases in which the punishment is necessarily at hard labor shall be tried by a jury composed of twelve jurors, of whom must concur to render a verdict. Cases in which the punishment may be imprisonment at hard labor, shall be tried by a jury composed of five jurors, all of whom must concur to render a verdict. Except as provided in Article 780, trial by jury may not be waived.

Source: Const. Art. VII, § 41; former R.S. 15:337-15:339, 15:342.

Official Revision Comment

(a) This article is taken substantially from the constitutional source provision. It condenses in terse clear terms all that is stated in former R.S. 15:337, 15:338, 15:339 and 15:342.

(b) In 1962 and 1964, proposals to amend the constitution to abolish the five-man jury were defeated in the legislature. The 1962 proposal was recommended by the Louisiana State Law Institute, and the 1964 proposal was sponsored by the Louisiana District Attorneys' Association.

(c) The supreme court ruled in *State v. Stanford*, 204 La. 439, 15 So.2nd 817 (1943), that the number of jurors to try a case is determined by the gravity or nature of the crime charged, and not by the verdict returned of a lesser offense.

Louisiana Constitution, Article 1, Sec. 9

§ 9. Criminal prosecutions; speedy public trial; jury; venue; witnesses; counsel; indictment and information; double jeopardy

Section 9. In all criminal prosecutions the accused shall have the right to a speedy, public and impartial trial in accordance with the provisions of this constitution. All trials shall take place in the parish in which the offense was committed, unless the venue be changed; except that the Legislature may provide for the venue and prosecution of offenses when one of the acts constituting an offense or an element of the offense occurs in a parish in this state and other acts or elements thereof occur out of the parish or state, or when an offense is committed in this state but the exact place of the commission of the offense in this state cannot be established. The Legislature may provide for the venue and prosecution of offenses committed within 100 feet of the boundary line of a parish. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information; but the Legislature may provide for the prosecution of misdemeanors on affidavits; provided, that no person shall be held to answer for capital crime, unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger. No

person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained. (As amended Acts 1962, No. 528, adopted Nov. 6, 1962.)

Louisiana Constitution, Art. 7 § 41

§ 41. Selection of jurors; women jurors; trial by judge; trial by jury

Section 41. The Legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

§ 42. Grand jury; district judges, authority in criminal cases

Section 42. A grand jury of twelve, nine of whom shall constitute a quorum and must concur to find an indictment, shall be empanelled in each parish

twice in each year, and shall remain in office until a succeeding grand jury shall have been empanelled, except in the parish of Cameron, in which at least one grand jury shall be empanelled each year.

The district judges shall have authority to try at any time misdemeanors, and, when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor, and to receive pleas of guilty in all cases less than capital.

Louisiana Revised Statutes, Title 14.

§ 2. Definition

In this Code the terms enumerated shall have the designated meanings:

(1) "Another" refers to any other person or legal entity, including the state of Louisiana or any subdivision thereof.

(2) "Anything of value" must be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private, and including transportation, telephone and telegraph services, or any other service available for hire. It must be construed in the broad popular sense of the phrase, and not necessarily as synonymous with the traditional legal term "property."

(3) "Dangerous weapon" includes any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm.

(4) "Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

(5) "Foreseeable" refers to that which ordinarily would be anticipated by a human being of average reasonable intelligence and perception.

(6) "Misdemeanor" is any crime other than a felony.

(7) "Person" includes a body of persons, whether incorporated or not.

(8) "Property" refers to both public and private property, movable and immovable, and corporeal and incorporeal property.

(9) "Public officer," "public office," "public employee" or "position of public authority" means and applies to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state of Louisiana or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department or institution of said state, parish, municipality, district, or other political subdivision.

(10) "State" means the state of Louisiana, or any parish, municipality, district, or other political subdivision thereof, or any agency, board, commission, department or institution of said state, parish, municipality, district or other political subdivision.

(11) "Whoever" in a penalty clause refers only to natural persons insofar as death or imprisonment

is provided, but insofar as a fine may be imposed "whoever" in a penalty clause refers to any person. As amended Acts 1962, No. 68, § 1.

§ 33. Battery defined

Battery is the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.

§ 34. Aggravated battery

Aggravated battery is a battery committed with a dangerous weapon.

Whoever commits an aggravated battery shall be imprisoned, with or without hard labor, for not more than ten years.

§ 35. Simple battery

Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon.

Whoever commits a simple battery shall be fined not more than three hundred dollars, or imprisoned for not more than two years, or both.

APPENDIX "B"

STATE OF DELAWARE
Office of the Attorney General

November 20, 1967

Honorable Jack P. F. Gremillion
Attorney General
Department of Justice
Baton Rouge, Louisiana 70804

Dear Jack:

In answer to your recent letter requesting information pertaining to your forthcoming case of Duncan v. Louisiana in the United States Supreme Court, I can advise you of the following.

The State of Delaware does not require that a jury trial be granted in all cases involving misdemeanors. In this State we have a Justice of the Peace System and these Justice of the Peace Courts have jurisdiction over most, but at all, misdemeanors. There is no trial by jury before a Justice of the Peace.

It is our law, however, that in all cases where a Justice of the Peace has jurisdiction over a misdemeanor, the defendant has the right to elect whether to have his case heard before the Justice of the Peace or to have it heard before the County Court of Common Pleas, which also has concurrent jurisdiction over misdemeanors. In the lower two of our three counties, the Court of Common Pleas is a court of record and a trial by jury is available if not waived by the defendant. In these two counties, therefore, a defendant charged with a criminal misdemeanor does

have a right or opportunity to have his case originally heard before a jury if he so desires. It is not mandatory that this be accomplished, however, and the decision is left to the individual defendant.

In our third county, New Castle County, the Court of Common Pleas is not a court of record although it still has concurrent jurisdiction with Justice of the Peace Courts over misdemeanors. In this county, if the defendant elects to have his case heard before the Court of Common Pleas, then it is accomplished without a jury. However, in either case, that is where the trial is before the Justice of the Peace or the Court of Common Pleas, an appeal lies to the Superior Court, in which instance the matter is heard de novo and a jury trial is granted to the defendant unless he specifically waives the same in writing.

These Justice of the Peace Courts and the Municipal Court of the City of Wilmington in certain cases, have jurisdiction to oppose imprisonment for more than 6 months, and as previously stated there is no right to a jury trial in these courts.

In answer to your request for the definition of the term "misdemeanor", I can best answer by offering to you the definition of a felony. In this State, all crimes are misdemeanors unless specifically in the criminal statute it is stated that the particular offense constitutes a felony. If the given statute does not define the offense setforth therein as a felony, then it is automatically a misdemeanor.

In this State it is necessary for a conviction or

an acquittal that the unanimous consent of all twelve members of the jury panel to be obtained. If all twelve members of the jury cannot agree as to either conviction or acquittal, then a hung jury and technically, a mistrial is declared by the court and the case is then tried again at the next term of court before a new jury panel.

Trusting that this will be of assistance to you, and with best wishes for the success of your efforts, I am

Sincerely yours,

/s/ DAVID P. BUCKSON
Attorney General

DPB/GCB/fcp

THE ATTORNEY GENERAL
200 One Charles Center
Baltimore, Md. 21201

November 17, 1967

Honorable Jack P. F. Gremillion
Attorney General of Louisiana
104 Supreme Court Building
New Orleans, Louisiana 70112

Re:

Jury Questionnaire
Gary Duncan v. State of Louisiana
Appeal to United States Supreme Court
No. 410

Dear General:

Receipt is hereby acknowledged of your letter with reference to the above captioned matter. In accordance with your request, I am happy to supply the following information concerning the requirements for trial by jury in misdemeanor cases in our State.

(a) Maryland does not require a trial by jury in any case involving a misdemeanor. Except for motor vehicle cases, Maryland does require that an accused be afforded a right to a jury trial if he so desires.

(b) A trial by jury is not permitted in motor vehicle cases. It may be well to note that some misdemeanors regarding motor vehicle violations do carry a penalty of more than six months' imprisonment.

(c) The local courts do have authority to try misdemeanors without a jury.

The municipal court and local trial magistrates have authority to try an accused for certain misdemeanors, but only after the accused has been advised of his rights to a trial by jury and has elected to be tried by the court. As previously noted, the above does not apply to traffic violations.

(d) Definition of a misdemeanor—The term "misdemeanor" contemplates all offenses which do not amount to a common law or statutory felony. Maryland Law Encyclopedia, Volume 7, Criminal Law, Section 7.

(e) Unanimous vote, normally by twelve jurors, is required for a conviction. Rule 758 of the Maryland Rules of Procedure specifically requires the unanimous vote by all jurors for conviction. This rule simply echoes the constitutional requirement found in Article 21 of the Maryland Declaration of Rights. Normally, the jury in Maryland is composed of twelve individuals. Rule 743, however, provides that the jury may consist of any number less than twelve upon the written stipulation of the parties and approval of the court.

It is a pleasure to have been of assistance in this matter.

Yours very truly,

/s/ FRANCIS B. BURCH
Attorney General

FBB:mem

State of Nebraska
DEPARTMENT OF JUSTICE
Lincoln

November 14, 1967

Hon. Jack P. F. Gremillion
Attorney General
Supreme Court Bldg.
301 Loyola Avenue
New Orleans, Louisiana 70112

Re:

Gary Duncan v. State of Louisiana
Appeal to U. S. Supreme Court
No. 410

Dear General:

The Nebraska rule regarding the right to a trial by jury is best set forth in the 1964 case of State v. Lookabill, 176 Neb. 254, 125 N. W. 2nd 695, wherein our court stated:

". . . .

"The defendant contends that the failure of the police magistrate to grant him a jury trial upon his demand was such an error as to invalidate his conviction. The controlling rule is stated in State v. Amick, 173 Neb. 770, 114 N.W. 2d 893, wherein it is said: 'The constitutional provision that the right of trial by jury should remain inviolate has been construed by this court to mean that it should remain as it was at the time of the adoption of the Constitution. The offense involved in the present case did not exist at that time and, consequently, it being a petty

offense, the right to a jury trial is not within the scope of the constitutional guaranty. Under such circumstances, the matter of a jury trial is a legislative matter. The Legislature, by section 26-183, R.R.S. 1943, has specifically provided for jury trial in all cases "except criminal cases arising under city or village ordinances." This is clearly within the province of the Legislature to do and controls the disposition of the present case.' The defendant was not entitled to a jury trial in the police court on an offense charged under the city ordinance. This is so even though the person charged would be entitled to a jury trial if prosecuted under a state statute for the same offense.

". . .

The rule regarding waiver of jury trial is set forth in the 1967 case of State v. Carpenter, 181 Neb. 639, 150 N.W. 2nd 129. In that case our court held that the right to a jury trial is personal to the defendant, and the state is without power to require one if the defendant wishes to waive it.

The case of State v. Amick, cited in the quotation above, contains this further explanation of our law: "A person tried for the violation of a city ordinance is not entitled to a jury trial, although the ordinance is but a reiteration of the provisions of a statute covering the same offense, and although the person charged would be entitled to a jury trial if prosecuted under the statute."

An individual is entitled to a jury trial in misdemeanor cases involving violations of state statutes.

A felony under state law includes all offenses for which an individual *may* be sentenced to the penitentiary, whether or not he is actually sentenced to the penitentiary. All other cases are misdemeanors.

Verdicts must be unanimous in criminal cases.

Although a defendant is entitled to a jury in all cases which are misdemeanors under the state law, we have a special provision for the trial of misdemeanors in which the punishment cannot exceed three months imprisonment or a fine of three hundred dollars, or both. This would cover more than 90% of our misdemeanors. In such cases the defendant may demand a jury but if no jury is demanded the cause is tried by the judge alone. If a jury is demanded in those cases it is only a six man jury. Furthermore, if the defendant consents, the cause may be tried before a jury of any number of men more than two and less than six. As a matter of actual practice, a jury is rarely demanded. In my seven years in the private practice in a small community, I only recall a jury having been demanded on one occasion. Also, I just talked with the judge of one our busier inferior courts here in Lincoln, and it has been more than five years since a jury was demanded in his court.

If additional information is needed please write me further.

Very truly yours,

/s/ CLARENCE A. H. MEYER
Attorney General

CAHM;dnj

THE STATE OF NEW HAMPSHIRE
Attorney General
Concord

November 15, 1967

Honorable Jack P. F. Gremillion
Department of Justice
Baton Rouge, Louisiana 70804

Dear General:

Your letter to Mr. Pappagianis of November 10, 1967 has been referred to me for an answer. The answers to questions a, b and c are as follows:

In New Hampshire all misdemeanors which are punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both, are tried in a district court without a jury. RSA 502-A:11. The municipal court system, which is being gradually eliminated, has jurisdiction without a jury over all misdemeanors which are punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both. RSA 502:18. This procedure is authorized by Pt. 2, Art. 77 of the Constitution of New Hampshire which reads as follows:

> "[Art.] 77. [Jurisdiction of Justices in Civil Causes.] The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed one hundred dollars and title of real estate is not concerned; but with right of appeal, to either party, to some other court. And the general court are further empowered to give to police courts original jurisdiction to try and de-

termine, subject to right of appeal and trial by jury, all criminal causes wherein the punishment is less than imprisonment in the state prison."

A defendant may, therefore, have a jury trial in misdemeanor cases, but he must first submit to a trial in a district or municipal court and then appeal to superior court. The following cases define the right to a jury trial in New Hampshire:

State v. Despres, 107 N.H. 297; *State v. Green*, 105 N.H. 260;

State v. Ring, 106 N.H. 509; *Wilmarth v. King*, 74 N.H. 512;

State v. Gerry, 68 N.H.495; *State v. Jackson*, 69 N.H. 511;

State v. Griffin, 66 N.H. 326; *State v. Rollins*, 8 N.H. 550, 559-565. See 39 Harvard Law Review 925, 929.

The answer to question d is that in New Hampshire any crime punishable by one year imprisonment or less is a misdemeanor. See Pt. 2, Art. 77 of the Constitution of New Hampshire and RSA 601:1.

The answer to question e is that New Hampshire does not have any jury trials in the municipal or district courts. All cases which are appealed to the superior court are tried by a jury of twelve persons, unless a jury is waived. Unanimity is required in a jury verdict.

I enclose a copy of the latest report of our Judicial Council indicating that in 1966 51,197 criminal

cases were tried without a jury in our municipal and district court system and that there were 562 appeals to the superior court where the defendant was entitled to a jury trial.

Very truly yours,

/s/ G. WELLS ANDERSON
Assistant Attorney General

GWA:blf

Enclosure

THE STATE OF NEW HAMPSHIRE
Judicial Council

July 21, 1967

Memorandum

Subject:

A comparison of a Statistical Compilation showing the work of the District and Municipal Courts for the year ending 1966 with the 10-year average of cases (1956-1965) and a comparison of 1965 with those of 1966.

To:

Members of the Council

This Council has since 1948 collected and compiled Municipal Court statistics on an annual basis. On July 1, 1964, 37 Municipal Courts were established and constituted District Courts. The attached compilation sets forth the work of the 37 District Courts and the 37 remaining Municipal Courts for the year 1966.

The juvenile cases showed a continual annual increase for the 6-year period commencing 1959 through 1965. When they reached an all-time peak of 1,934 cases. The 1966 compilation shows a total of 1,801 Juvenile Cases—a decrease of 133 cases. The principal reason for this decrease results from the enactment of legislation in 1965 which reduced the juvenile age from 18 to 17 years of age.

The total number of cases as reported for the year 1966, with the exception of small claims, continues to show an increase over the average number

THE STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL
Statistics On Work of District and Municipal Courts—1966

COURT	TOTAL ALL CASES	CRIMINAL CASES										JUVENILE CASES				SMALL CLAIMS							
	Criminal Juvenile Small Claims Civil	Total Criminal Cases	Felonies	Misdemeanors	Drunkenness	Motor Vehicle: Parking and Local Ordinances	Motor Vehicle: State Motor Vehicle Laws	Respondent Pled Not Guilty.	Respondent Found Not Guilty	Nol Prossed	Appealed	Total Juvenile Cases	Neglected Children	Delinquent Children	Transferred to Superior Court	Pending 12/31/65	Entered	Judgment Entered After Hearing	Judgment Entered on Default	Otherwise Disposed of	Pending 12/31/66	Pending 12/31/65	Entered	Tried or Heard
1. Portsmouth	1,630	1,337	51	1,286	66	158	897	72	8	46	11	55	17	38		7	177	6	59	107	12	2	61	
(m) New Castle	93	92		92		55	34	5	1	1							1		1					
(m) Rye	228	218	2	216	1	45	115	15	7	8	1	5	1	4	2		5	2		3				
2. Hampton	2,067	1,927	8	1,919	134	82	1,289	127	19	140	32	44	1	43			69	4	17	48			27	
(m) Seabrook	371	323	7	316	10	5	194	56	11	31	6	3		3			44	7	6	31			1	
3. Exeter	787	496	14	482	15	31	353	63	9	7	17	13	1	12		6	216	29	38	155		6	62	
(m) New Market	136	118	1	117	3	22	70	26	9	3	3	8	1	7			10	3		7				
(m) Epping	223	207	1	206	2	37	157	23	7		1	3		3			12	1	4	7			1	
4. Derry	869	650	11	639	6	77	405	98	29	14	6	33	1	32		4	155	3	42	98	16		31	
5. Auburn	421	386	7	379	6	21	290	45	5	13	4	5		5			19	3	5	11		3	11	
(m) Northwood	89	60		60			51	3	2		2						29			29				
6. Salem	1,357	1,202	23	1,179	23	59	957	158	10	63	19	25		25	1	3	86	24	26	39		3	44	1
7. Plaistow	857	648	14	634	7	57	485	54	18	28	1	5	2	3			174	42	19	113			30	1
8. Dover	1,843	1,703	39	1,664	122	702	879	150	10	9	68	29	7	22			76	42	34				35	2
9. Rochester	1,425	1,269	18	1,251	36	97	987	113	6	24	17	31	4	27		5	101	11	49	39	7		24	
(m) Farmington	235	198	8	190	16	2	118	29	1	4	3	24		24	1		13		6	7				
10. Somersworth	512	342	15	327	18	25	216	23	1	11	8	22	1	21		1	136	10	33	92	2		12	
(m) Rollinsford	211	203	3	200	6	32	104	44	16	8	9	6		6	1		2			2				
11. Durham	459	453		453	5	51	315	61	5	10	9	2		2			4		4					
12. Laconia	2,241	1,865	18	1,847	187	241	953	223	22	61	21	108	4	104	1	29	183	7	30	170	5	22	85	9
(m) Alton	232	212		212	2		179	15	4	3	2	1		1		3	19	12	1	7	2			
(m) Belmont	359	355	8	347	3		322	14	2	14	1	2		2			2	1	1					
(m) Meredith	384	347	3	344	2	6	285	29	1	1	1	19	6	13			18	4	14					
(m) Tilton	255	235	1	234	11		193	42	8	9		7		7			12	4	8				1	
13. Conway	634	449	6	443	13	38	270	34	8	39	6	27	1	26		33	136	2	42	107	18	14	22	
14. Ossipee	372	314	9	305	6	8	253	32	6	12	7	7		7		23	43	15	29	22			8	
15. Wolfeboro	378	230	20	210	3	3	106	46	10	15	1	16	1	15		2	125	1	1	97	28	4	7	
16. Concord	3,545	2,951	30	2,921	164	908	1,879	116	27	113	14	78	7	71		30	180	5	32	146	27	239	336	1
(m) Allenstown	41	41		41			27	8		3							13	2	2	9			1	
(m) Hooksett	574	558	7	551	18	1	539	40	8	14	5	2		2			4		1	2	1			
(m) Loudon	76	68		68	5	1	52	14		1		4		4			9	2	5	2			2	
(m) Pembroke	97	76	2	74	22	1	53	8	2		1	10	4	6			5		2	3			2	
(m) Pittsfield	282	270	2	268	4	39	170	30	5	14	3	5		5			5		2	3	1		2	
17. Franklin	1,451	1,253	12	1,241	47	91	976	78	23	16	22	30	8	22	4		135	11	109	15			33	
(m) New London	98	94	1	93		16	56	4	1	1							4	4						
18. Henniker	287	245	2	243	3	31	122	21	6	10	2	20	1	19			20	1	11	7	1	1	2	
19. Manchester	12,734	11,337	330	11,007	1,529	5,664	3,646	839	170	444	103	635	28	607	3	34	320	50	120	123	61	86	442	5
(m) Bedford	357	343	3	340	2	54	276	42	19	2	8	2		2			12	7	1	4				
20. Nashua	5,555	4,754	90	4,664	338	1,288	2,441	216	48	205	11	197	25	172		4	259	6	122	120	15	12	345	8
(m) Merrimack	495	421	3	418		14	370	22	9	7	1	12		12	1	1	57	16	13	24	5		5	
(m) Pelham	144	128	1	127	1	16	81	6	2	6	1	1		1		1	15	9		7				
21. Milford	855	727	15	712	9	59	556	92	8	41	7	17	3	14			69	10	14	42	3	3	42	
(m) Wilton	241	206	6	200		9	177	11	3	2	3					4	34	2	12	24	2		1	
22. Peterborough	679	564	2	562	10	16	488	54	7	6	3	3		3			95		19	67			17	
(m) Greenville	103	80		80		12	59	19	3	4	3	4		4			17	14	3				2	
23. Hillsborough	481	406	1	405	6	7	312	28	5	19	2	10	2	8		2	50	11	5	36		3	15	
24. Goffstown	1,093	984	13	971	15	134	671	94	21	38	9	31		31		1	43	4	17	23		2	35	
25. Keene	2,517	2,094	28	2,066	191	105	1,321	228	45	79	20	47	15	32		16	167	85	50	45	3	21	209	18
(m) Hinsdale	178	171		171	6	4	129	22	4	15	2	7	4	3										
(m) Walpole	95	95		95	1	4	89	1																
26. Jaffrey	651	555	11	544	19	32	353	68	14	27	10	3		3	3		93	6	87					
27. Claremont	1,195	1,039	22	1,017	178	92	402	154	19	65	22	24	1	23		2	118	17	89	21			14	
(m) Charlestown	108	107	1	106	2	5	83	9	3	3	2						1			1				
28. Newport	527	493	22	471	29	8	317	67	10	4	2	17		17			4		4				13	
(m) Sunapee	78	75	1	74	1	1	68	6	3								2			2			1	
29. Hanover	377	334	3	331	19	9	238	23	6	11	4	3		3			40		17	25				
30. Haverhill	318	192	1	191	7	13	116	14	4	8		8		8		17	117		1	121	12	2	1	
31. Lebanon	1,114	843	21	822	107	14	492	81	26	44	9	38	14	24			228	5	130	93			5	
(m) Canaan	64	57		57	5	2	39	11		3	1	2		2			5	4		1				
*(m) Enfield	7	7		7			6			1														
32. Littleton	693	530	7	523	23	14	309	35	1	11	7	18	1	17			143	114	24	5			2	
(m) Bethlehem	68	67		67	1		57	2				1		1										
33. Plymouth	633	562	3	559	16	69	477	47	7	6	4	5		5			63	58	5				3	
(m) Ashland	165	133	1	132	2	26	105	2		4	1	6	5	3			26	5	4	16	1			
(m) Bristol	233	139		139	1	49	52	6	1			11		11			83	4	19	60				
(m) Campton	71	61	4	57			55	6	1	1							10	6	4					
(m) Lincoln	192	181	1	180	3	19	159	4		4	3					2	10		12				1	
(m) Woodstock	151	144		144		3	132	12	1	3	4	2	2				5	5						
34. Berlin	753	538	2	536	64	58	274	125	31	10	3	22	1	21			191	22	12	157			2	
35. Gorham	311	277		277	3		213	43	7		4						31	2	3	26			3	
36. Colebrook	550	442	12	430	20	9	228	21	2	5	2	16		16	1		92	61	31					
37. Lancaster	457	340	1	336	15	32	289	64	18	2	6	2		2			113	1	26	86			2	
(m) Northumberland	189	169	1	168	8	9	98	22	9	5	1	8	2	6			12	7	3	2				
(m) Whitefield	223	207	2	205	9	6	101	26	4	6	1					6	16		14	6	2			
TOTALS	59,774	51,197	954	50,243	3,606	10,766	29,633	4,449	818	1,837	562	1,801	169	1,632	16	236	4,778	798	1,485	2,510	224	423	1,998	5

*Enfield Municipal Court was abolished by resignation of the Justice, effective February 22, 1966.

THE STATE OF NEW HAMPSHIRE
JUDICIAL COUNCIL

Statistics On Work of District and Municipal Courts—1966

	CRIMINAL CASES									JUVENILE CASES				SMALL CLAIMS					CIVIL CASES								
				Motor Vehicle																							
	Felonies	Misdemeanors	Drunkenness	Parking and Local Ordinances	State Motor Vehicle Laws	Respondent Plead Not Guilty	Respondent Found Not Guilty	Nol Prossed	Appealed	Total Juvenile Cases	Neglected Children	Delinquent Children	Transferred to Superior Court	Pending 12/31/65	Entered	Judgment Entered After Hearing	Judgment Entered on Default	Otherwise Disposed of	Pending 12/31/66	Pending 12/31/65	Entered	Tried or Heard	Settlement	Pending 12/31/66	Damages to Persons or Property	Contracts	Landlord and Tenant	Transferred to Superior Court
	51	1,286	66	158	897	72	8	46	11	55	17	38		7	177	6	59	107	12	2	61	2	61		5	13	45	3
		92		55	34	5	1	1							1		1										
	2	216	1	45	115	15	7	8	1	5	1	4	2		5	2		3									
	8	1,919	134	82	1,289	127	19	140	32	44	1	43			69	4	17	48			27	7	20		6	15	6	
	7	316	10	5	194	56	11	31	6	3		3			44	7	6	31			1	1					1	
	14	482	15	31	353	63	9	7	17	13	1	12		6	216	29	38	155		6	62	6	62	3	3	65	6	2
	1	117	3	22	70	26	9	3	3	8	1	7			10	3		7									
	1	206	2	37	157	23	7		1	3		3			12	1	4	7			1		1				1	
	11	639	6	77	405	98	29	14	6	33	1	32		4	155	3	42	98	16		31	5	22	4	3	17	11	
	7	379	6	21	290	45	5	13	4	5		5			19	3	5	11		3	11	4	9	1	5	6	2	
		60			51	3	2		2						29			29										
	23	1,179	23	29	957	158	10	63	19	25		25	1	3	86	24	26	39		3	44	16	26	5	7	23	14	
	14	634	7	57	485	54	18	28	1	5	2	3			174	42	19	113			30	14	16		1	19	10	
	39	1,664	122	702	879	150	10	9	68	29	7	22			76	42	34				35	23	12	18	1	5	12	
	18	1,251	36	97	987	113	6	24	17	31	4	27		5	101	11	49	39	7		24	5	19		5	13	6	
	8	190	16	2	118	29	1	4	3	24		24	1		13		6	7										
	15	327	18	25	216	23	1	11	8	22	1	21		1	136	10	33	92	2		12	1	8	3	1	3	8	
	3	200	6	32	104	44	16	8	9	6		6	1		2			2										
		453	5	51	315	61	5	10	9	2		2			4			4										
	18	1,847	187	241	953	223	22	61	21	108	4	104	1	29	183	7	30	170	5	22	85	91		16	8	78	4	1
		212	2		179	15	4	3	2	1		1		3	19	12	1	7	2									
	8	347	3		322	14	2	14	1	2		2			2	1	1											
	3	344	2	6	285	29	1	1	1	19	6	13			18	4	14											
	1	234	11		193	42	8	9		7		7			12	4	8				1		1				1	
	6	443	13	38	270	34	8	39	6	27	1	26		33	136	2	42	107	18	14	22		19	17		30	1	
	9	305	6	8	253	32	6	12	7	7		7		23	43	15	29	22			8	1	3	4		6	2	1
	20	210	3	3	106	46	10	15	1	16	1	15		2	125	1	1	97	28	4	7	1	1	9	1	8	1	
	30	2,921	164	908	1,879	126	27	113	14	78	7	71		30	180	5	32	146	27	239	336	14	207	346	54	275	7	1
		41			27	8		3																				
	7	551	18	1	539	40	8	14	5	2		2			13	2	2	9			1		1				1	
		68	5	1	52	14		1		4		4			4		1	2	1									
	2	74	22	1	53	8	2		1	10	4	6			9	2	5	2			2	1	1				2	
	2	268	4	39	170	30	5	14	3	5		5			5		2	3	1		2	1	1				2	
	12	1,241	47	91	976	78	23	16	22	30	8	22		4	135	11	109	15			33	9	24		7	21	5	
	1	93		16	56	4	1	1								4												
	2	243	3	31	122	21	6	10	2	20	1	19				1	11	7	1	1	2	2		1	1	1	1	
	330	11,007	1,529	5,662	3,649	839	170	444	103	635	28	607	1	34	320	50	120	123	61	86	442	54	393	81	33	320	85	7
	3	340	2	54	276	42	19	2	8	2		2			12	7	1	4										
	90	4,664	338	1,288	2,441	216	48	205	11	197	25	172		4	259	6	122	120	15	12	345	82	252	23	40	252	51	
	3	418		14	370	22	9	7	1	12		12	1	1	57	16	13	24	5		5	4	1				5	
	1	127	1	16	81	6	2	6	1	1		1		1	15	9		7										
	15	712	9	59	556	92	8	41	7	17	3	14			69	10	14	42	3	3	42	6	33	6	3	35	7	
	6	200		9	177	11	3	2	3					4	34	2	12	24	2		1	1					1	
	2	562	10	16	488	54	7	6	3	3		3			95		19	67			17	6	10	1	1	13	3	
		80		12	59	19	3	4	3	4		4			17	14	3				2		2				2	
	1	405	6	7	312	28	5	19	2	10	2	8		2	50	11	5	36		3	15	2	14	6	1	15	2	
	13	971	15	134	671	94	21	38	9	31		31		1	43	4	17	23		2	35	1	32	4	32		5	
	28	2,066	191	105	1,321	228	45	75	20	47	15	32		16	167	85	50	45	3	21	209	180	50	17	15	184	31	
		171	6	4	129	22	4	15	2	7	4	3																
		95	1	4	89	1																						
	11	544	19	32	353	68	14	27	10	3		3	3		93	6	87											
	22	1,017	178	92	402	154	19	65	22	24	1	23		2	118	17	82	21			14	5	8	1	1	4	9	
	1	106	2	5	83	9	3	3	2						1			1										
	22	471	29	8	317	67	10	4	2	17		17			4		4				13	3	10			3	10	
	1	74	1	1	68	6	3								2			2			1	1					1	
	3	331	19	9	238	23	6	11	4	3		3			40		17	23										
	1	191	7	13	116	14	4	8		8		8		17	117		1	121	12	2	1	3			1	2		
	21	822	107	14	492	81	26	44	9	38	14	24			228	5	130	93			5	4	1			1	4	
		57	5	2	39	11		3	1	2		2			5	4		1										
		7			6			1																				
	7	523	23	14	309	35	1	11	7	18	1	17			143	114	24	5			2	2	2				2	
		67	1		57	2				1		1																
	3	559	16	69	477	47	7	6	4	5		5			63	58	5				3	3	3		3			
	1	132	2	26	105	2		4	1	6	5	3			26	5	4	16	1									
		139	1	49	52	6	1			11		11			83	4	19	60										
	4	57			55	6	1	1							10	6	4											
	1	180	3	19	159	4		4	3					2	10		12				1	1				1		
		144		3	132	12	1	3	4	2	2				5	5												
	2	536	64	58	274	125	31	10	3	22	1	21			101	22	12	157			2	1	1			1	1	1
		277	3		213	43	7		4						31	2	3	26			3	3					3	
	12	430	20	9	228	21	2	5	2	16		16	1		92	61	31											
	4	336	15	32	289	64	18	2	6	2		2			113	1	26	86			2	2			1		1	
	1	168	8	9	98	22	9	5	1	8	2	6			12	7	3	2										
	2	205	9	6	101	26	4	6	1					6	16		14	6	2									
	954	50,243	3,606	10,766	29,633	4,449	818	1,837	502	1,801	169	1,632	16	236	4,778	798	1,485	2,510	224	423	1,998	568	1,324	566	239	1,428	383	16

by resignation of the Justice, effective February 22, 1966.

of cases for the preceding ten years. The following comparison is based on the cases for 1966 compared to the previous 10-year average:

Comparison 10-year average Cases with 1966 cases

	Average No. of Cases 1956-1965	Total Cases 1966	Percentage of Increase - Decrease
Total All Cases	42,126	59,774	42%
Criminal Cases	34,480	51,197	48%
Juvenile Cases	1,476	1,801	22%
Small Claims	5,223	4,778	−8½%
Civil Cases	947	1,998	111%

Comparison Showing Increase—1966 over 1965

	1965	1966	Percentage of Increase - Decrease
Total All Cases	53,152	59,774	12%
Criminal Cases	45,007	51,197	14%
Juvenile Cases	1,933	1,801	−7%
Small Claims	4,587	4,778	4%
Civil Cases	1,625	1,998	23%

A comparison of the Total Number of Motor Vehicle Cases to the Total Criminal Cases for the past three years:

	Total Criminal Cases	(State) M. V. Violations	(Town) M. V. Violations	Total M. V. Violations	M. V. Violations To Total Criminal Percentage
1964	41,066	24,219	7,010	31,229	76%
1965	45,007	27,050	7,326	34,376	76%
1966	51,197	29,633	10,766	40,399	79%

RAE S. LARABA
Secretary

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
Trenton, New Jersey 08625

November 17, 1967

Honorable Jack P. F. Gremillion
Attorney General of Louisiana
Department of Justice
New Orleans, Louisiana

Re:

Gary Duncan v. State of Louisiana
Appeal to United States Supreme Court No. 410

Dear General:

I am in receipt of your letter of November 10, 1967, and have attempted herein to provide you with the information you have requested. The history of New Jersey proceedings with reference to minor offenses may be found in the case of *State v. Maier*, 99 Atl. 2d 13, 21 N.J. 235 (1953).

The following are the answers to your questions:

(a) Does your State require trial by jury in all misdemeanor cases? In all offenses in which the penalty might exceed six months' imprisonment?

ANSWER: In New Jersey, the term "misdemeanor" envelops the common law felony and all other serious offenses carrying with them a penalty of more than one year in jail. *Jackson v. State*, 49 N.J.L. 252 (Sup. Ct. 1887). These offenses require an indictment and trial by jury. The common-law "misdemeanor" to which your questions refer is known as a disorderly persons offense in New Jersey. N.J.S.

2A:170-1, et seq. These disorderly persons offenses carry with them a maximum penalty of one year in jail or $1,000 fine or both. N.J.S. 2A:169-4. Disorderly persons violations are considered to be minor offenses in New Jersey and are therefore tried summarily without indictment and trial by jury. It is the minor nature of these offenses rather than the penalty involved which determines whether a trial by jury will accrue. *Latimer v. Wilson,* 103 N.J.L. 159 (E. & A. 1926).

ANSWER: In no instance is a trial by jury required in New Jersey for a minor offense.

(c) Are there any provisions for trial without a jury in the local courts of your state, such as municipal courts, mayor's courts, traffic courts, justice of the peace courts, and the like, and if so, is trial without jury provided in local courts where the penalty might exceed six months' imprisonment?

ANSWER: The Magistrate's court may summarily proceed with the following offenses:

(a) Violations of motor vehicle and traffic laws;

(b) Violations of Fish and Game laws;

(c) Violations of municipal ordinances;

(d) Violations of the disorderly persons law;

(e) Violations of Title 44—"Poor" of the Revised Statutes (Ch. 1 and Ch. 4);

(f) Violations of Title 9—"Children" of the Revised Statutes (Ch. 6 and 17);

(g) Violations of Title 30—"Institutions and Agencies" of the Revised Statutes (Ch. 5, Art. 4).

(h) Offenses of a lesser degree than misdemeanor for which no indictment is required.

N.J.S. 2A:8-21.

(d) What is your State's definition of a misdemeanor?

ANSWER: For a definition of "misdemeanor", see the history in the case of *State v. Maier, supra.* See also the answer to question (a) in reference to disorderly persons offenses, which, in fact, are the subject of your inquiry.

(e) If there are instances in which trial by jury is required for misdemeanor or for offenses in which the penalty might exceed six months' imprisonment, what is your State's requirement as to the number of jurors and as to number of jurors' votes requires for conviction?

ANSWER: Not applicable.

I believe that this information should assist you in the above captioned matter.

Very truly yours,

/s/ JOSEPH A. HOFFMAN
Assistant Attorney General

JAH:emo

COMMONWEALTH OF PUERTO RICO
Office of the Attorney General
San Juan

Hon. Jack P. F. Gremillion
Attorney General
State of Louisiana
Department of Justice
Baton Rouge

Dear General Gremillion:

I have your letter of 10 November 1967 regarding *Gary Duncan v. State of Louisiana*, appeal to the United States Supreme Court, No. 410, as to jury trial in a misdemeanor case.

Your questions (a), (b) and (c) can be first answered by quoting the law.

(A) Rule 111 of Criminal Procedure of Puerto Rico, 1963 states:

"Rule 111. RIGHT TO TRIAL BY JURY AND ITS WAIVER.-

Questions of fact in cases of felony and, *except as provided by special statutes, in misdemeanor cases, provided that the information was originally filed in the Superior Court and was also within the jurisdiction of the District Court,* shall be tried by jury unless the defendant expressly and personally waives the right to trial by jury. The court shall grant the trial by jury at any time after the arraignment." (Underlining ours).

(B) Article II, Section II of the Constitution of the Commonwealth of Puerto Rico provides that:

". . . In all prosecution for a *felony* the accused

shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine." (Underlining provided).

(C) In the case of *The People of Puerto Rico v. Leandro Miranda*, 79 D.P.R. 667 (1956), the Supreme Court of Puerto Rico held that:

"(1) In support of the first assignment, appellant maintains that, in view of the nature of the offense and of the penalties provided by law, the constitutional provision which guarantees to every accused a trial by jury 'in all prosecutions for a felony,' is applicable. We do not agree. Paragraph 2 of Sec. 11 of Art. II of the Constitution of the Commonwealth of Puerto Rico provides that: 'In all prosecutions for a felony the accused shall have the right of trial by an impartial jury composed of twelve residents of the district, who may render their verdict by a majority vote which in no case may be less than nine. L.P.R.A., Vol. I, p. 181. As clearly indicated by the report of the Bill of Rights Committee and the debates of the Constitutional Convention, the term 'felony' employed in that constitutional provision does not include any offense classified as a misdemeanor under the legislation enacted before the Constitution went into effect, which did not necessarily grant the right to trial by jury. The nature of the offense and the penalties provided by law are of slight importance in this respect.[2] Here the violations for which appellant

[2]In explaining the limited scope of the constitutional guaranty of a trial by jury in felony cases, the Committee

was prosecuted were characterized as misdemeanors under Act No. 31 of September 15, 1950. And the law specifically provides that the trial shall be held by the court."

(D) Lately, attacks have been made as to this point in our Courts, but still in *The People of Puerto Rico v. Hector Juan Diaz-Torres*, No. CR-62-405, 30 December 1963, the Supreme Court of Puerto Rico (not reported in English), our highest court, con-

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pointed out the following: "We have not used the term 'grave' as equivalent to 'felony', as defined in our penal law. We have used it as including all 'felony' offenses and those others in which, without being so, present legislation grants a fortiori the right to trial by jury. An example of this is the offense of involuntary manslaughter which, although a 'misdemeanor', can only be tried in the District Court, the defendants charged with this offense having the right to a trial by jury. However, those misdemeanors with respect to which the existing legislation grants the right to trial by jury whenever they are originally prosecuted in the District Court but not when they are originally prosecuted in the Municipal Court, are not included, nor such misdemeanors as to which the existing legislation does not grant the right to a trial by jury, although they are prosecuted originally in the District Court.

The word 'grave' as used in the text, shall always include the offenses now classified as 'felonies', even though this classifications may disappear in the future. It shall also include always those misdemeanors in which the right to trial by jury is now necessarily granted." (Italics ours). See 21 Revista Juridica de la Universidad de Pureto Rico 1, 19 (1951).

On the other hand, the same view on the meaning of the term 'felony' and the scope of the constitutional right to a trial by jury was adopted in the debates of the Constitutional Convention. Journal of Sessions, Constitutional Convention of Puerto Rico, p. 606.

firmed their findings and decision in the *Miranda* case, supra.

As to question (d), we quote Article 14 (Section 35 of the Laws of Puerto Rico Annotated, Title 33) of the Penal Code, 1937:

"FELONY AND MISDEMEANOR DEFINED

A felony is a crime which is punishable with death, or by imprisonment in the penitentiary. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary."

Regarding question (e), I think it has been already answered above. Nevertheless, I wish to make clear that for conviction, it is required of at least nine (9) jurors and there exists the right to poll the jury by either party or on the court's own motion.

I hope the above information will be of help to you.

Cordially,

/s/ JOSÉ C. APONTE
Attorney General

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE
UNITED STATES

Department of Law
P.O. Box 280
Charlotte Amalie, St. Thomas, V.I. 00801

November 20, 1967

Honorable Jack P. F. Gremillion
Attorney General
Department of Justice
104 Supreme Court Building
301 Loyola Avenue
New Orleans, Louisiana 70804

Re:

Gary Duncan vs. State of
Louisiana - Appeal to the
United States Supreme Court
No. 410

Dear General:

Reference is made to your letter dated November 10th relating to the above-captioned matter.

To assist in providing the Supreme Court with a detailed picture as to the law of the states with respect to providing a jury trial in misdemeanor situations, I present the following information in reply to the five questions which you pose:

(a) and (b). The Revised Organic Act of 1954 (Act of Congress, July 22, 1954, Ch. 558, 68 Stat. 497) does not require trial by jury in all misdemeanor cases. In misdemeanor cases where the penalty does

not exceed six months' imprisonment there is no provision for a jury trial; where, however, the penalty does exceed six months' imprisonment and the trial is conducted in the District Court (a statutory—rather than a constitutional—Federal District Court) the defendant is entitled to a jury trial, in accordance with the provisions of Section 26 of the Revised Organic Act:

"Sec. 26. Trial by jury

All criminal cases originating in the district court [i.e. felonies or misdemeanors where the maximum penalty exceeds six months] shall be tried by jury upon demand by the defendant or by the Government. If no jury is demanded the case shall be tried by the judge of the district court without a jury, except that the judge may, on his own motion, order a jury for the trial of any criminal action. The legislature may provide for trial in misdemeanor cases by a jury of six qualified persons."

It should be noted that both the District and Municipal Courts of the Virgin Islands (the latter being established by the Legislature of the Virgin Islands) have concurrent jurisdiction over misdemeanors when the penalty exceeds six months, if the case is tried in the Municipal Court the trial is without a jury, if in the District Court, a jury trial may be held in accordance with Section 26.

(c) There are in the Virgin Islands only two courts, the District Court and the Municipal Court, hence, the answer to question (c) is to be found in questions (a) and (b).

(d) The definition of a misdemeanor is found in Section 2 of Title 14 of the Virgin Islands Code as follows:

"(a) Crimes or offenses are divided into felonies and misdeameanors.

"(b) Notwithstanding any act of the Legislature to the contrary

(1) a felony is a crime or offense which is punishable by imprisonment for more than one year; and

(2) every other crime or offense is a misdemeanor."

(e) The jury which would sit at a misdemeanor trial is composed of 12 members and a unanimous vote is necessary for conviction. The authority of the Legislature (see last sentence of Section 26 of the Revised Organic Act of 1954) to provide for trial by a jury of six persons has never been exercised.

I trust that the foregoing will be of assistance to you. If additional information is necessary please feel free to contact me.

Cordially,

/s/ PETER J. O'DEA
First Assistant Attorney General

PJO'D:vmm

APPENDIX "C"

History of Right to Jury Trial in Criminal Cases in Louisiana

I. French Origin.

At least from the year 1712, the law of France applied to the then French colony of Louisiana. Exclusive jurisdiction in criminal cases was vested in the Superior Council. This council was a judicial court, composed of a varying number of men, three of whom had to be the three principal colonial officials and two or more of whom were prominent local citizens or persons specially commissioned in France for the task. Five members of the Council had to concur for a judgment in a criminal case. See Dart, "The Place of the Civil Law in Louisiana," 4 Tul. L. Rev. 163, 164 (1930).

II. Spanish History.

Shortly after the cession of Louisiana to Spain, in 1769, the French criminal law was swept away and the Spanish law substituted. See, 4 Dart, *op. cit. supra*, at 165; and Lobingier, introduction to *Las Siete Partidas*, translated by Scott (CCH ed., 1931) at liii. Exclusive criminal jurisdiction was vested in several individual judges, called *alcaldes*, except where a defendant had the right to be tried by a military or ecclesiastical court. See Martin, *The History of Louisiana from the Earliest Period* (1882) at 209-212; III Gayarre, *History of Louisiana* (2d ed., 1879) at 3-4, 7; and Lobigier, *op. cit. supra*, at lxxii.

Although Spain ceded Louisiana back to France shortly before the United States took possession, the Spanish law remained in effect. Tucker, "Source Books of Louisiana Law, Part III, Spanish Laws," 9 Tul. L. Rev. 396-7 (1933-34).

III. American History.

From the outset, the United States took cognizance of the French and Spanish origins of its Louisiana citizenry. In passing the original laws for the territory of Orleans (the present day Louisiana), Congress provided that:

> "In all criminal prosecutions which are *capital*, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all cases criminal and civil in the superior court, the trial shall be by a jury, if either of the parties require it." Sec. 5, Act of March 26, 1804, 2 U.S. Stat. 283, at 284.

However, for the rest of the area covered by the Louisiana purchase (the *territory* of Louisiana), Congress provided that ". . . in *all* criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage. . . ." Sec. 12, Act of March 26, 1804, 2 U.S. Stat. 283, at 287.

The First Session of the Legislative Council for the Parish of Orleans enacted Sec. 34 of Chapter L, Acts, on May 4, 1805 which guaranteed trial by jury of every person charged with crimes or misdemeanors, ". . . if the party accused or the person who prosecutes desires it."

The Louisiana Constitution of 1812, provided as follows at Art. VI, (3 West's LSA Constitution (1955), at 520-521):

"Section 18.

"In all criminal prosecutions, the accused have the right of being heard by himself or counsel, of demanding the nature and cause of the accusation against him, of meeting the witnesses face to face, of having compulsory process for obtaining witnesses in his favour, and prosecutions by indictment or information, *a speedy public trial by an impartial jury of the vicinage*, nor shall he be compelled to give evidence against himself." (Emphasis added-)

"Section 23.

"The citizens of the town of New Orleans shall have the right of appointing the several public officers necessary *for the administration and the police of the said city;* pursuant to the mode of election which shall be prescribed by the Legislature: Provided that the mayor and recorder be ineligible to a seat in the general assembly." (Emphasis added.)

The Louisiana Constitution of 1845, Title VI, (3 West's LSA Constitution (1955) at 536, 538) provided as follows:

"Article 107. Prosecutions shall be by indictment or information. The accused shall have a speedy public trial by an impartial jury of the vicinage; . . ."

"Article 128. The citizens of the city of New Orleans shall have the right of appointing the

several public officers necessary for the administration of the police of the said city, pursuant to the mode of elections which shall be prescribed by the legislature: Provided, That the mayor and recorders shall be ineligible to a seat in the general assembly; *and the mayor, recorders, and aldermen shall be commissioned by the governor as justices of the peace, and the legislature may vest in them such criminal jurisdiction as may be necessary for the punishment of minor crimes and offenses, and as the police and good order of the said city may require.*" (Emphasis added)

Additionally, Title IV, Article 81 of that constitution provided that the criminal jurisdiction of the justices of the peace is as shall be provided for by law.

The pertinent provisions of the Louisiana Constitutions of 1852 and 1864 are substantially similar to those of the Constitution of 1845, cited above. For the 1852 provisions, see 3 West's LSA Constitution (1955), Title VI, Article 103, at page 556; Article 124 at p. 558; and Title IV, Article 78, at p. 554. For the 1864 provisions, see *ibid*, Title VII, Article 105, at p. 92; Article 133 at p. 581; and Title V, Article 82, at p. 576.

The pertinent provisions of the Louisiana Constitution of 1868, (3 West's LSA Constitution (1955)), are as follows:

Title I, Article 6, at p. 588.

"Prosecutions shall be by indictment of information. The accused shall be entitled to a speedy public trial by an impartial jury of the

parish in which the offence was committed, unless the venue be changed . . ."

Title IV, Article 87, at p. 599.

"In criminal matters the parish courts shall have jurisdiction in all cases when the penalty is not necessarily imprisonment at hard labor or death, and when the accused shall waive trial by jury. They shall also have the power of committing magistrates and such other jurisdiction as may be conferred on them by law. *There shall be no trial by jury before the parish courts.*" (Emphasis added)

It should also be noted that Title IV, Article 89, at p. 600, provided that justices of the peace shall have criminal jurisdiction as provided by law. Additionally, Title IV, Article 94, at pp. 600-601, provided:

"No judicial powers, except as committing magistrates in criminal cases, shall be conferred on any officers other than those mentioned in this title, except such as may be necessary in towns and cities; and the judicial powers of such offices shall not extend further than the cognizances of cases arising under the police regulations of towns and cities in the State. . . ."

The Louisiana Constitution of 1879, (3 West's LSA Constitution 1955 at p. 612) provided in Article 7 of its Bill of Rights as follows:

"Art. 7. In all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury, except that, in cases where the penalty is not necessarily imprisonment at hard labor or death, the General Assembly

may provide for the trial thereof by a jury, less than twelve in number; . . ."

Article 136 of that same Constitution (Ibid., p. 637) provided as follows:

"Art. 136. The General Assembly may provide for police or magistrates' courts, but such courts shall not be vested with jurisdiction beyond the enforcement of municipal ordinances or as committing magistrates."

Pursuant to the Constitution of 1879, the Louisiana State Legislature enacted Section 4 of Act No. 35, dated March 17, 1880. That act provided as follows for offenses not necessarily punishable at hard labor or death:

"Sec. 4. That in all trials held under the provisions of this act, said trial shall be before a jury composed of five persons: *provided*, that the accused may waive trial by jury and be tried by the court; and . . . " (Emphasis added)

The Louisiana Constitution of 1898 (3 West's LSA Constitution (1955), at pp. 667 and 694) provided as follows:

Bill of Rights, Article 9.

"Art. 9. In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided, that cases in which the penalty is not necessarily imprisonment at hard labor, or death, shall be tried by the court *without a jury* or by a jury less than twelve in number, as provided elsewhere in this Constitution; . . ." (Emphasis added.)

> "Art. 116. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, which shall not be prior to 1904, be tried by the judge *without a jury*. . . ." (Emphasis added.)

Article 140 of the Constitution of 1898 (Ibid., p. 703) also provided for the establishment of two city criminal courts in the City of New Orleans to sit and hear criminal cases without juries.

The Louisiana Constitution of 1913 contained provisions substantially similar to those of the Constitution of 1898. See, 3 West's LSA Constitution (1955), Article 9, at p. 764; Article 116 at p. 788, and Article 140, at p. 801-802.

The current Constitution enforced in Louisiana is the Constitution of 1921, 3 West's LSA Constitution. (1955) Its pertinent provisions are Article 1, Section 9 of the Bill of Rights, which reads in pertinent part:

> "In all criminal prosecutions the accused shall have the right to a speedy, public and impartial trial in accordance with the provisions of this Constitution."

Article 7, Section 41 of the Louisiana Constitution currently provides in pertinent part that:

> ". . . all cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury."

Pursuant to these constitutional provisions of 1921, the Louisiana State Legislature enacted Articles

340 and 341, Act No. 2, dated July 2, 1928, which read as follows:

Article 340.

"Every misdemeanor shall be triable by the judge without the intervention of a jury."

Article 341.

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

These last quoted provisions are the source laws of the current Louisiana statutes in force. Article 779 of the current Code of Criminal Procedure of Louisiana, states:

"A defendant charged with a misdemeanor shall be tried by the court without a jury."

The current definition of "misdemeanor" is contained in Louisiana R.S. 14:2 (1950), which states that:

"In this Code the terms enumerated shall have the following designated meaning:

...

'Felony' is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

...

'Misdemeanor' is any crime other than a felony."

APPENDIX "D"

TRIALS BY JURY IN LOUISIANA JUDICIAL DISTRICT COURTS

Court Years 1965 and 1966

(Compiled by Judicial Council of Supreme Court of Louisiana)

1965
Trial by Jury

Dist.	Civil	Criminal	1965 Total
1.	—	6	6
2.	1	3	4
3.	—	—	—
4.	—	32	32
5.	—	2	2
6.	—	—	—
7.	—	—	—
8.	—	—	—
9.	—	5	5
10.	1	—	1
11.	—	1	1
12.	—	5	5
13.	—	1	1
14.	28	13	41
15.	9	5	14
16.	1	12	13
17.	—	6	6
18.	—	2	2
19.	3	27	30
20.	—	—	—
21.	—	4	4
22.	1	10	11
23.	2	6	8
24.	1	19	20
25.	—	7	7
26.	—	1	1
27.	—	2	2
28.	—	3	3
29.	1	—	1
30.	3	2	5
31.	—	6	6
Orleans	82	176	258
Totals	133	356	489

1966*
Trial by Jury

Dist.	Civil	Criminal	1966 Total
1.	2	16	18
2.	1	1	2
3.	—	—	—
4.	1	30	31
5.	1	6	7
6.	—	1	1
7.	—	1	1
8.	—	3	3
9.	3	14	17
10.	1	1	2
11.	—	4	4
12.	1	—	1
13.	—	4	4
14.	40	10	50
15.	5	3	8
16.	3	6	9
17.	5	7	12
18.	—	2	2
19.	2	51	53
20.	—	—	—
21.	4	3	7
22.	2	11	13
23.	4	2	6
24.	1	9	10
25.	—	2	2
26.	—	2	2
27.	2	—	2
28.	1	—	1
29.	2	—	2
30.	5	—	5
31.	—	5	5
Orleans	74	185*	259
Totals	160	379	539

*In 1966—48.81% of criminal jury cases took place in Orleans Parish.
**Figures for 1966 cover period from October 1, 1965 through Sept. 30, 1966.

Report of Cases Processed in Louisiana Judicial District Courts*

	Civil Cases		Criminal Cases		Total Cases	
	Filed	Term.	Filed	Term.	Filed	Term.
Statewide Totals						
(b)	90,156	66,305	107,008	107,674	197,164	173,979
Percentage Increase over 1965 Statistics	9.1	7.2	27.4	18.8	18.3	14.1

(a) Figures include St. Bernard Juvenile Court which was consolidated with the Twenty-Fifth Judicial District Court effective January 1, 1966.

(b) Source: Statistics presented herein are compiled from the monthly reports submitted to the office of the Judicial Administrator by the Clerks of the District Courts throughout the state.

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*Table VII, Annual Report of The Judicial Council of The Supreme Court of Louisiana for 1966.

OFFICE OF DISTRICT ATTORNEY
First Judicial District
Caddo Parish
Suite 201 Court House
Shreveport, Louisiana

December 1, 1967

Mr. William P. Schuler
Second Assistant Attorney General
Supreme Court Building
301 Loyola Avenue
New Orleans, Louisiana

Re:
Gary Duncan vs State of Louisiana
U. S. Supreme Court
Miscl. Number 410

Dear Mr. Schuler:

Your letters of November 10th and 14th in regard to the above case were received by this office but did not reach my desk until this week.

I have assembled some figures which I am enclosing and which I hope will be of some assistance to you.

Yours very truly,

/s/ ALBERT S. LUTZ, JR.
Assistant District Attorney

ASL,JR:leb
encl.

FIRST JUDICIAL DISTRICT COURT
CADDO PARISH, LOUISIANA

(Does not Include cases in Shreveport City Court)

1966

Jury cases tried	5
Five Man jury cases tried	0
Misdemeanor cases tried	162
Possible sentence exceeded 6 months	88
Actual sentence exceeded 6 months	4

1967 (January to November 1)

Jury cases tried	11*
Five man jury cases tried	1
Misdemeanor cases tried to Nov. 1	152
Possible sentence exceeded 6 Mo.	88
Actual sentence exceeded 6 Mo.	3

* (4 more set for December)

Average delay between arraignment and trial:

Non-jury cases .....1 to 2 *weeks*
Jury cases .....3 to 9 *Months*

If a twelve man jury was required in all cases where the punishment exceeds 6 months, there would be a hardship in obtaining jurors and a great expense would be added. Some estimated expenses are as follows:

Additional Judge	20,000.00
Additional Assistant District Atty.	10,000.00
Court Reporter	6,000.00
Additional Court Room	?
Might have to put addition to Court House Jurors ($850 to $1000 per case)	
Additional Clerk	7,000.00
Additional Bailiff	7,000.00

NOTE: In addition to District Court cases, the *State* misdemeanor *charges* in City Court *yearly* would be *at least* these figures:

1. Traffic (*only* D.W.I., Leaving Scene & Reckless Driving 2,000
2. All other *State* misdemeanors (*excluding all* Disturbing Peace cases, Vagrancy & Liquor Violations 2,000

EXPENSES PAID BY THE CADDO PARISH POLICE JURY FOR JURY TRIALS IN THE FIRST JUDICIAL DISTRICT COURT:

Grand Jury 1966	$1,458.24
Petit Jury 1966	2,935.08
Meals for Jurors 1966	—0—
Commissioners Drawing Juries 1966	1,373.80
Totals for 1966	$5,767.12
Grand Jury 1967	$ 1,268.68
Petit Jury 1967	8,083.34
Meals for Jurors 1967	979.14
Commissioners Drawing Juries 1967	2,116.76
Totals for 1967	$12,447.92

NOTE: No Witness Fees included in these totals or Deputies attending Court.

Annual Report, Shreveport City Court
Caddo Parish, Louisiana

1966 Records of Criminal Section of City Court

CRIMINAL CASES

Type of Charge	No. of Cases Filed	No. Cases Disposed of in Court
Assault	624	601
Concealed Weapon	227	234
Criminal Damage	110	122
Discharge Firearms	33	34
Disturbing the Peace	996	990
Drunk	2,603	2,729
Exposing Person	38	40
Gambling	221	218
Illegal Use of Auto	60	62
Liquor Laws	15	12
Loitering	52	51
Miscl. Ordinances and Codes	250	157
Parole Violator	1	1
Resisting Arrest	91	112
Refusal to Pay Cab	20	23
Simple Battery	98	83
Theft	907	734
Vagrancy	610	672
Vile and Profane	83	100
TOTAL	7,058	6,988

Peace Bonds Issued and Heard by Court	74
Bench Warrants Issued by Court	1,634
Appeals Sent to First District Court	252
Appeals Disposed of by District Court	158
Appeals Pending in District Court	94
Cases Awaiting Trial in City Court, as of January 1, 1967	70

House Arrest ..... 7 Weekends Sentences..... 36

Annual Report, Shreveport City Court
Caddo Parish, Louisiana

1966 Records of Criminal Section of City Court

TRAFFIC CASES

Type of Charge	No. Tks. Issued	Termi. in V.B.	Termi. in Court
Careless and Reckless	819	330	527
Cut Corner	28	22	6
Drunken Driving	298	0	313*
Drivers License	2,178	756	1,356
Lane Ordinance	931	778	134
Left Turn	391	362	36
Leaving Scene	82	1	1,082
Mechanical Defects	6,941	5,867	1,082
Miscellaneous	691	551	178
Negligent Injury	14		18*
One Way Street	220	185	33
Red Light	4,990	4,376	666
Speeding	3,293	2,454	543
Stop Sign	3,740	2,969	447
TOTAL	24,616	18,651	5,437

Total Number of Traffic Cases pending as of January 1, 1967 279

In 1965 handled 1,792 Non-Record Suits and of Court, Joe C. Hayes $136,131.00

*Included cases pending from 1965.

1966 RECORDS OF CIVIL SECTION OF CITY COURT

In 1965 handled 1,792 Non-Record Suit and 1,448 Record Suits.

In 1966 handled 1,532 Non-Record Suits and 1,256 Record Suits.

In Year 1966 took in fees (Court Cost Deposits) amounting to sum of ..... $ 39,945,38

STATE OF LOUISIANA
Parishes of Lincoln and Union

December 1, 1967

Honorable William P. Schuler
Second Assistant Attorney General
State of Louisiana Department of Justice
Supreme Court Building
New Orleans, Louisiana

Dear William:

Replying to your memorandum to all District Attorneys dated November 10, 1967 as amended by a memorandum dated November 14, 1967, this is to report as follows:

1. There have been 3 jury cases tried in my District in the past 2 years.

2. (A) There have been 35 misdemeanor cases tried in the previous 2 years where a possible sentence could exceed 6 months.

   (B) There have been 15 misdemeanor cases tried in the previous 2 years where the sentences actually imposed exceeded 6 months.

3. There has been 1 5-man jury case tried in my Judicial District in the past 2 years.

4. The average delay in a non-jury case as compared to a jury case in my District is 6 months.

5. There would definitely be an insurmountable hardship in attaining jurors in my District if more jury trials were added.

6. There is no way to estimate with any degree of accuracy the cost in my District in having

the 12-man jury in all cases where the punishment exceeds 6 months. However, I would say it could run as high as $35,000.00 or $40,000.00 per year.

Very truly yours,

/s/RAGAN D. MADDEN
District Attorney

RDM:dh

OFFICE OF
THE DISTRICT ATTORNEY
Sixth Judicial District
East Carroll - Madison and Tensas Parishes

November 14, 1967

Honorable Wm. P. Schuler
Assistant Attorney General
104 Supreme Court Building
New Orleans, Louisiana 70112

Dear Mr. Schuler:

Answering catagorically the questions propounded in your letter of November 10 regarding the handling of criminal cases in the Sixth Judicial District, please be advised as follows:

1. Two

2. Approximately 600

3. One

4. Average delay in non-jury cases is one month as compared to six months for jury cases.

5. Yes. It would be almost impossible in this District to process misdemeanors via trial by jury when the sentences would exceed six months.

6. Approximately $160,000.00.

7. Approximately $80,000.00.

I have already advanced my ideas to your office regarding the trial by jury of all misdemeanors when the sentence might exceed six months; however, I will reiterate here.

The processes of administration and functions of

the Court would be brought almost to a stand still since the number of cases to be tried would bring about a complete breakdown in our judicial system. With the limited personnel and facilities available in this District, we could not begin to process or try all cases within a year of their initiation. Thusly, each year would bring about a back log of cases that would result in preventing the defendants from obtaining a speedy trial, as they claim they are entitled to under the provisions of the Constitution. With kind regards, I am

Sincerely yours,

/s/THOMPSON L. CLARKE

TLC/ff

RONALD C. MARTIN
District Attorney
Courthouse Building
P. O. Box 233
Natchitoches, La. 71457

November 16, 1967

Mr. William P. Schuler
Second Assistant Attorney General
104 Supreme Court Building
New Orleans, Louisiana 70112

Dear Bill:

In answer to your letters of November 10th and November 16, 1967, please be advised these are my answers to your questions:

1. Five (5) cases;
2. Thirty-one (31) cases;
3. One (1) case;
4. One month for non-jury—two years for jury cases;
5. Yes. We have no industry, and one parish has only about 40,000 population and the other 12,000;
6. Approximately $75,000.00;
7. This requires no answer, but I must add that because of the lack of time, I did not make an effort to obtain the figures from the Natchitoches City Court.

Trusting this will be of some benefit to you, I remain

Sincerely yours,

/s/ RONALD C. MARTIN
District Attorney

RCM/gbh

November 10, 1967

TO ALL DISTRICT ATTORNEYS:

IN RE:
Gary Duncan v. State of Louisiana
United States Supreme Court
Misc. No. 410

The above numbered and entitled matter has been set for hearing before the United States Supreme Court the week of December 11, 1967.

This case involves the question of jury trial in all misdemeanor cases in which the sentences may exceed a term of six (6) months. It also involves the question of whether a jury has to consist of 12 men and, further, whether the verdict of the jury has to be unanimous.

In conjunction with the District Attorney from Plaquemines Parish, where the case presently arises, we are preparing the brief in this matter.

In connection with the preparation of our brief we would appreciate answers to the following questions.

1. How many jury cases have been tried in your district in the past two years?

2. How many misdemeanor cases, where the penalty exceeded six (6) months, have been tried without a jury in the preceding two years?

3. How many five-man jury cases have been tried in your judicial district in the previous two years?

4. What is the average delay in a non-jury case as compared to a jury case in your district?

5. Would added jury trials work a hardship in obtaining jurors in your district?

6. Can you estimate the cost in your district in having the twelve-man jury in all cases where the punishment exceeds six (6) months?

7. In areas where the city courts try State offenses, please try to add these figures in your compilation.

We would appreciate your prompt answer to these queries and we further solicit any additional advice or suggestion you might have with regard to the manner in which our defenses might be more successfully defended.

Yours very truly,

/s/WILLIAM P. SCHULER
Second Assistant Attorney General
104 Supreme Court Building
New Orleans, Louisiana 70112

State of Louisiana
DEPARTMENT OF JUSTICE
New Orleans, Louisiana

November 14, 1967

TO ALL DISTRICT ATTORNEYS:

IN RE:
Gary Duncan v. State of Louisiana
United States Supreme Court
Misc. No. 410

In reference to our letter of November 10, 1967, requesting certain information, would you kindly amend question No. 2 to read as follows:

> How many misdemeanor cases have been tried in the previous two years in the following categories:
>
> A. Where a possible sentence could exceed six months;
>
> B. Where the sentence actually imposed exceeded six months.

Yours truly,

/s/WILLIAM P. SCHULER
Second Assistant Attorney General

WPS:aeb

B-1200, 12-67